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No. 00-1903

In The

Supreme Court of the United States

ROGER AND VIRGINIA GALLAND,

Petitioners,

v.

CITY OF CLOVIS, CLOVIS CITY COUNCIL, and CLOVIS MOBILE HOME RENT COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

The California Supreme Court stated the central issue – an overtly *federal* issue – on the first page of its opinion in the clearest possible words. There, after noting its recent decision in *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal.4th 761 (1997), the Court said:

> "We left open the question, however, whether a future rent adjustment, which we will refer to as a *Kavanau* adjustment, also *forecloses a suit for damages for violation of a right to constitutional due process (U.S. Const., 5th & 14th Amends.) under 42 United States Code section 1983.*" (Pet. App., p. 1; emphasis added.)[1]

The Court then proceeded to "address that question here" and to hold that a Section 1983 suit could only be brought – if at all – *after* additional state administrative and judicial proceedings (to determine and review a "*Kavanau* adjustment") had been concluded. (Pet. App. pp. 1-2.)

Even if a "*Kavanau* adjustment" could provide relief (a dubious proposition, as the dissenting opinions below make clear), California's conclusion simply defies this Court's settled teachings:

> "[W]e conclude that *exhaustion of state administrative remedies should not be required* as a prerequisite to bringing an action pursuant to § 1983." (*Patsy v. Board of Regents*, 457 U.S. 496, 516 [1982]; emphasis added.)

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[1] Please note that the basis for the Court's opinion was thus *entirely* federal.

> " . . . 'the dominant characteristic of civil rights actions [is that] *they belong in court.*' [Citation.] 'These causes of action,' we have explained, 'exist *independent of any other legal or administrative relief that may be available as a matter of federal or state law*. They are judicially enforceable *in the first instance*.' [Citation.]" (*Felder v. Casey*, 487 U.S. 131, 148 [1988]; italics by the Court; underscoring added.)[2]

With all due respect to the California Supreme Court and counsel for the City, the decision below is wholly in conflict with this Court's settled decisions, and not as

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[2] The City's Brief in Opposition is thus off base. That brief opens by accusing the Gallands of failing to accurately portray the decision of the California Supreme Court, asserting that "[t]here are two principal holdings in this case." (Br. in Opp., p. 1.) To find the first, the City has to go to pages 30-34 of the opinion, while it finds the second at pages 44-45. (Br. in Opp., 1.) However, as noted above, the California Supreme Court candidly laid bare its central issue – a federal one – on the first page, indeed in the first paragraph, of its opinion. Thus, the court below – unlike the City – faced the federal issue up front, and did not reach either of the matters discussed by the City until *after* it held that the Gallands' federal Section 1983 action had to be deferred until after various state administrative proceedings, and *after* it set up impermissible roadblocks in the path of constitutionally aggrieved landowners seeking relief under Section 1983, as is their *federal* right. Indeed, it *could not* have reached those other issues without first vacating the decisions of the trial court and the Court of Appeal awarding compensatory damages under Section 1983.

Because it refuses to acknowledge the fundamental issue decided by the California Supreme Court, and the fact that California's invention is flatly contrary to this Court's decisions, the City's brief is of little assistance to the Court.

represented in the City's Brief in Opposition. It improperly relegates Section 1983 to a status subservient to state administrative and judicial proceedings. Corrective action by this Court is imperative.

I

THE ISSUE IS NOT *WHAT* THE CALIFORNIA SUPREME COURT ORDERED DONE ON REMAND, BUT *THAT* IT ORDERED A REMAND AT ALL

The City's brief focuses on the substantive issues that would be involved on remand without recognizing that, under settled jurisprudence of this Court, no remand at all is appropriate here. The fundamental *federal* error committed by the California Supreme Court was in ordering *any* sort of remand that set aside the trial court's Section 1983 judgment *for the avowed purpose of pursuing state law administrative preconditions to a Section 1983 action*. Thus, to argue that "the two principal holdings in this case" deal with the standards for determining the constitutionality of price controls and the lengths to which an administrative agency can go in mistreating mobile home park owners before crossing the constitutional line (Br. in Opp., p. 1) wholly misses the point.[3]

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[3] This is entirely apart from the fact that the trial court found as a matter of fact, after extensive evidentiary hearings, that the City's actions *were* confiscatory and that its process *was* outrageous (Pet. App., pp. 143-144) – *and the City did not appeal from any of the factual findings* (Pet. App., p. 107), which are thus final. When that happens, this Court has accepted the factual findings of the actual fact finder, even when they conflict with later conclusions by a state supreme court. (See, e.g., *Nectow v. City of Cambridge*, 277 U.S. 183, 188 [1928].)

Under settled Section 1983 jurisprudence, the California Supreme Court should have kept its hands off the Section 1983 judgment instead of vacating it on the ground that other state administrative proceedings had to be followed first.

The California Supreme Court's defiance of this Court's Section 1983 cases by inventing a precondition to invoking Section 1983 is all the more inexplicable in light of *Patsy v. Board of Regents*, 457 U.S. 496 (1982). There, this Court reviewed an *en banc* decision of the 5th Circuit Court of Appeals that had crafted what it called a "flexible" exhaustion policy for Section 1983 cases, including a detailed list of factors to consider in deciding whether such preconditions could be required. (See *Patsy*, 457 U.S. at 499.) In undertaking that review, the Court noted that there had been unhappiness expressed by some courts and commentators with the idea that there could be no state remedy exhaustion requirement in Section 1983 cases. (457 U.S. at 500.) Recognizing that it was "not writing on a clean slate" (457 U.S. at 500), this Court conducted an exhaustive re-examination of its jurisprudence (*including at least nine decisions during the preceding two decades* [457 U.S. at 500]), as well as the legislative history of Section 1983 and some more recent legislation before announcing its holding:

> "[W]e conclude that *exhaustion of state administrative remedies should not be required* as a prerequisite to bringing an action pursuant to § 1983." (*Patsy*, 457 U.S. at 516; emphasis added.)

That conclusion could not have been more clearly stated. Thus, when the California Supreme Court boldly asserted that it would "address the question" of whether

a state administrative remedial process to seek a "*Kavanau* adjustment" "forecloses a suit for damages for violation of a right to constitutional due process (U.S. Const., 5th and 14th Amends.) under 42 United States Code section 1983)" (Pet. App., p. 1) and then decided that such a state administrative proceeding *does* "foreclose" a Section 1983 suit (Pet. App., pp. 1-2), it plainly defied this Court's decision in *Patsy*. Nor was that inadvertent. Both dissenting opinions flagged the issue and called attention to its erroneous disposition by the majority in language that is clear beyond quibble:

> "The result *compelled* by *Patsy* . . . is *clear*. Since a party need not exhaust state administrative remedies before filing a section 1983 suit in state court, this court *cannot validly require* the Gallands to invoke and exhaust a '*Kavanau* adjustment' before pursuing their section 1983 claim." (Pet. App., p. 61; emphasis added; Jones, J., concurring and dissenting.)

> "The majority holds that, before a plaintiff may obtain damages under section 1983, he or she must first exhaust administrative remedies by seeking regulatory relief from the same agency that imposed the confiscatory price regulations in the first place. . . . This conclusion *directly contravenes Patsy v. Florida Board of Regents*. . . . " (Pet. App., pp. 64-65; emphasis added; Brown, J., dissenting.)

The California Supreme Court's decision cannot stand before the force of *Patsy*, its progenitors and its progeny. The fact that the City has chosen not to defend this blatant evasion of the law, but seeks instead to divert attention away from it by discoursing on what to do on

remand, speaks volumes for the bankruptcy of the California position.

II

UNDER SETTLED DECISIONS OF THIS COURT, THE DECISION BELOW IS FINAL FOR SUPREME COURT REVIEW

The City asserts that, because the California Supreme Court reversed the Court of Appeals and remanded the matter for further consideration, there is no "final" judgment for review here.

Wrong. A remand by a state court is not talismanic, certainly not where its avowed purpose is for consideration of matters this Court has held *not* to be either required or permitted.

This Court explained in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477 (1975), and reiterated recently in *Florida v. Thomas*, ___ U.S. ___, 121 S.Ct. 1905 (2001) that the finality rule "ha[s] not been administered in . . . a mechanical fashion. . . . " Both *Cox* and *Thomas* list four categories of cases that may appear superficially not to be "final," but which are actually final for purposes of Supreme Court review. This case fits at least two of those categories.

First, there are cases "in which the federal issue, finally decided by the highest court in the State, will survive and require [U.S. Supreme Court] decision regardless of the outcome of further state court proceedings." (*Cox*, 420 U.S. at 480.) Here, the central federal

issue is whether a State may create preconditions to lawsuits under Section 1983 in defiance of generations of this Court's decisions like *Felder* and *Patsy* quoted earlier. Nothing the lower state courts can possibly do on remand can alter the federal question of whether a federal Section 1983 action can be shunted aside to await yet another round of exhaustion of state law administrative and judicial remedies.

Second, "there are those situations . . . where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come." (*Cox*, 420 U.S. at 482-483)

Here, the federal issue has been finally decided: in California, the federal Section 1983 suit will have to wait until – if then – the newly announced state "*Kavanau* adjustment" proceedings have been concluded. That issue *cannot* change unless this Court intervenes. A decision by this Court would deal with the ultimate question of whether the Section 1983 compensation awarded by the trial court and affirmed by the Court of Appeal should be reinstated, or whether the plaintiffs can be diverted to a never-never land of what the court below candidly characterized as years of "bureacratic bungling."

To fail to address such a dispositive issue would, in this Court's words "seriously erode federal policy" (*Cox*, 420 U.S. at 483), that policy being that Section 1983 cases "exist independent of any other legal or administrative relief that may be available as a matter of federal or state

law. They are judicially enforceable *in the first instance"* (*Felder*, 487 U.S. at 148), not as a last resort, after exhaustion of repetitive, byzantine state-imposed administrative procedures. (See Pet., p. 8; see also the Amicus Curiae Brief of the American Assn. of Small Property Owners, pp. 5-6.) Without this Court's review now, that foundational precept of federal civil rights law will be swept away – at least in California, and in those states that may find her holdings persuasive.

CONCLUSION

There are two matters that arise from this Petition that are not rationally contestable:

- First, this Court's decisions in *Patsy* and *Felder* properly deny states (and that includes state courts) the power to precondition Section 1983 actions on compliance with state-law remedies, whether administrative or judicial. Section 1983 provides a remedy in the first, not last, instance.
- Second, the California Supreme Court's majority defiantly disregarded this long- and well-settled line of this Court's authority, and has sent these plaintiffs – whose mistreatment by the City's "bureaucratic bungling" the court below expressly acknowledged – on an economically back-breaking wild goose chase, in pursuit of illusory "remedies" that paramount federal law forbids.

Accordingly, Petitioners pray that a writ of certiorari issue, that the erroneous decision below be reversed, and

that the federal rights of Californians (the same as other Americans) under Section 1983 be restored.

Respectfully submitted,

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